

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**DEM TECHNOLOGY LLC,  
EVAN MORGAN**

**Defendants.**

**CASE NO. 3:22-cr-00048**

**JUDGE NEWMAN**

**GOVERNMENT'S SENTENCING  
MEMORANDUM**

The United States of America, by and through its undersigned counsel, herein submits its sentencing memorandum for Defendants DEM Technology LLC and Evan Morgan. The Government respectfully recommends that this Court impose the sentence agreed-upon by the parties in the Plea Agreement.

**Background**

The Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") provides for federal regulation of pesticide distribution, sale, and use. The purpose of FIFRA is to ensure that pesticides sold in the United States are safe, effective, and bear labeling containing true and accurate information. The United States Environmental Protection Agency ("EPA") has responsibility under FIFRA for regulating the manufacture, labeling, and distribution of all pesticides shipped or received in interstate commerce. A pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, to include things like bacteria and viruses.

Under FIFRA, all pesticides must be registered with the EPA before they can be sold or distributed. 7 U.S.C. § 136a(a). The registration process is detailed, and applicants are required

to submit a substantial amount of information to the EPA in support of a request for registration. Items of information that must be submitted in support of an application to register a pesticide include all proposed labeling for the pesticide; a statement of all pesticidal claims to be made for the pesticide, and efficacy data. See 7 U.S.C. § 136a(c); 40 C.F.R. § 158.155.

Applicants seeking to register a pesticide must also provide important information to EPA on any unreasonable adverse effects of the pesticide on humans or the environment and must also conduct various studies of their products in compliance with EPA's Good Laboratory Practice Standards (40 C.F.R. § 160) or generally accepted scientific methodology and provide the resultant data to EPA. 40 C.F.R. § 152.82.

### **Facts**

The relevant facts, which have been stipulated to by all parties, are provided in the Statement of Facts attached to the plea agreements. Docket Entry 16, Attachment A; Docket Entry 17, Attachment A. In summary, DEM Technology LLC (DEM), is an antimicrobial product manufacturer, located in Dayton, Ohio and defendant Evan Morgan is the Vice President. DEM first registered the product "SaniGuard" with the EPA in 1996. It is only authorized for use as a surface spray. However, since SaniGuard's initial EPA registration, DEM has sold the product primarily as a "Total Release Fogger,"<sup>1</sup> contrary to its registration. DEM has never established efficacy nor safety data associated with Saniguard's use as a fogger as required by FIFRA.

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<sup>1</sup> According to DEM's SaniGuard "Total Release Fogger" directions, as printed on the label, it works as follows: the user is instructed to "Press down firmly on the edge of the actuator tab until it locks into place, then set the fogger on the floor, stand or table. Leave the area immediately after activating the fogger. Keep treated area closed for at least 15-20 minutes before returning."

On two occasions in 2004 and 2005, the EPA sent letters to DEM alerting it that the company had not supplied the EPA with efficacy data to support SaniGuard's use as a fogger. From 2004 to 2012, DEM received and acknowledged repeated correspondence from the EPA, directing the removal of fogging language from the SaniGuard label. On July 23, 2012, the EPA issued a Stop Sale, Use or Removal Order (SSURO), which required that DEM "stop all distributions and sales of all 'SaniGuard' and related pesticide products." On July 21, 2015, the EPA settled a Consent Agreement and Final Order (Consent Order), which ordered DEM to pay a civil penalty.

Despite the Consent Order, DEM did not stop producing or selling the Total Release Fogger with the violative labels. Indeed, Defendants DEM and EVAN MORGAN continued to produce and sell Total Release Fogger in 2015, 2016, 2017, and 2018.

### **Sentencing Guidelines**

The prosecution team calculates the guidelines as:

Base Offense Level:	8 (U.S.S.G. § 2Q1.2(a))
Acceptance of responsibility:	-2 (§ 3E1.1(a))
Total offense level:	6

### **Proposed Sentences**

The defendants DEM Technology and Evan Morgan each pleaded guilty to a four count Information charging them with knowingly distributing a registered pesticide where claims made for it as a part of its distribution or sale substantially differed from claims made in connection with its registration.

The government and DEM Technology have agreed to a binding plea pursuant to Rule 11(c)(1)(C) in which the company would agree to a 2 year term of probation, pay a fine of \$175,000, provide a copy of all labels it intends to use to EPA, notify all previous customers that its fogging product makes no pesticidal, virucidal, or bactericidal claims in writing and on the phone, and make all reasonable efforts to notify all other third-party sellers of its product that its fogging product makes no pesticidal, virucidal, or bactericidal claims.

The government and Evan Morgan have agreed to a binding plea in which both parties will recommend a 2 year term of probation during which Evan Morgan will complete 100 hours of community service. The parties agreed that the amount of the fine shall be left to the discretion of the Court, although the government has agreed to recommend a within-guidelines fine.

### **Argument**

The court should sentence the defendants, DEM Technology LLC and Evan Morgan, in accordance with the Plea Agreements signed by the parties.<sup>2</sup> The sentences were fashioned in accordance with the relevant factors set out in 18 U.S.C. § 3553(a). They acknowledge the nature and circumstances of the offenses and the history and characteristics of the defendants. In addition, the sentences reflect the seriousness of the crimes, promotes respect for the law, deters future crime, and provides just punishment. Finally, the agreed-upon sentences recognize the defendants' acceptance of responsibility.

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<sup>2</sup> The amount of fine to be imposed upon defendant Evan Morgan was left to the discretion of the Court. The Government was recently made aware by defense counsel that Evan Morgan is in the process of taking over DEM Technology. As described in the Presentence Investigation Report, DEM had significant profits directly connected to the sales of its violative products, and Evan Morgan's taking control of the organization likely changes his personal finances significantly. In light of this development, The Government requests that the Court consider imposing a fine on Defendant Evan Morgan.

**Conclusion**

The government requests that the Court impose sentences in accordance with the Plea Agreements signed by the parties.

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a true and correct copy of the Government's Sentencing Memorandum was filed electronically through the District Court Electronic Case System on 12/01/2022 and automatically served upon counsel for Defendant.

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